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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/155135

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department Family Care - MCO in regard to Medical Assistance, a hearing was held on April 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Family Care (MCDFC) correctly denied the Petitioner's request for full fingered compression gloves.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

Patti Noble, Ombudsman  
Board on Aging and Long Term Care  
1402 Pankratz Street, Suite 111  
Madison, WI 53704

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Annette Jensen, Family Care RN Care Manager  
Curative Care Network  
Milwaukee County Department Family Care - MCO  
901 N. 9th St.  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On January 10, 2014, the Petitioner requested full-fingered compression gloves. (Exhibit 1)

3. On January 15, 2014, MCDFC sent the Petitioner a notice indicating that it was denying her request. (Exhibit 1)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 30, 2014. (Exhibit 1)
5. Petitioner has a pair of compression gloves that do not have finger tips. (Testimony of Petitioner)
6. Petitioner wore the gloves twice and then stopped wearing them, because the tips of her finger turned purple and hurt more than they did without the gloves. (Testimony of Petitioner)
7. Petitioner is diagnosed with peripheral neuropathy/small fiber neuropathy in her hands. (Testimony of Ms. Jensen-RN Care Manager and Exhibit 4, pg. 5)

### **DISCUSSION**

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Milwaukee County Department of Family Care (MCDFC), implements the plan by contracting with one or more service providers, such as Curative Care Network.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under [42 USC 1396n](#) (c) and ss. [46.275](#), [46.277](#) and [46.278](#), Stats., the long-term support community options program under s. [46.27](#), Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

*Emphasis added*

Wis. Admin Code [DHS 10.44\(2\)\(f\)](#) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

In the case at hand, Petitioner is asking the Family Care program to pay for full fingered compression gloves. It is argued that the gloves would help the Petitioner better manage the chronic pain in her fingertips, which would in turn, help her meet her Long Term Care Outcomes, as stated in her Member Centered Plan. (See Exhibit 4, pg. 9-12)

It is undisputed that compression gloves would be helpful in managing the Petitioner's chronic pain in her hands. Indeed, that is why the fingerless gloves were previously purchased. However, it is the position of the MCDFC that full fingered gloves are contraindicated by Petitioner's neuropathy and diabetes. MCDFC also asserted that Petitioner's chief complaint was that her hands got cold and that a more cost-effective option would be traditional gloves or mittens.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. The burden then shifts to the agency to explain why it concluded the applicant was not eligible for the requested benefits. Thus, Petitioner bears the burden to prove that she meets the criteria for approval of a pair of full fingered compression gloves.

The Wisconsin Administrative Code states that the CMO, through its case management team, shall monitor the health and safety of the enrollee. Wis. Admin. Code §DHS 10.44(2)(d)3, *emphasis added*. Thus, if the full fingered compression gloves are contraindicated by Petitioner's health conditions, Family Care would be required to deny coverage of those gloves.

With regard to MCDFC's concerns about Petitioner's diabetes, the Petitioner submitted a letter dated April 17, 2014, from Lisa L. [REDACTED] a Physician's Assistant working under a Dr. Ty [REDACTED] at the [REDACTED] and [REDACTED] and the [REDACTED] indicating that, "Having diabetes should not be a barrier in her obtaining compression glove therapy." (Exhibit 4, pg. 6)

With regard to MCDFC's concerns about Petitioner's neuropathy, Dr. Chamindra [REDACTED] from the Neurology Department at [REDACTED] signed an order on April 22, 2014, for full fingered compression gloves for the Petitioner that notes her diagnoses to be small fiber neuropathy and joint pain in her hands. (Exhibit 4, pg. 5) It does not seem likely that Dr. [REDACTED] would have signed such an order, if the gloves were contraindicated by Petitioner's neuropathy.

With regard to the less expensive option of using "regular" gloves or mittens, the Petitioner testified that her hands do not get cold and that on the contrary, her hands and fingers often feel like they are hot, swollen and painful. The Petitioner further testified credibly, that the "fingerless" gloves, which actually are only missing the tips of the fingers, ultimately caused her more pain, because they constrict the tips of her fingers, where she experiences the most pain in her hands. The Petitioner brought the compression gloves to the hearing and put them on, which showed that her finger tips did, in fact, become purple. Based upon the foregoing, it is found that the proposed option of standard gloves or mittens is not appropriate.

I note that neither party submitted documentation concerning the cost of full fingered compression gloves and Petitioner made no request for a specific brand name or type of full fingered compression glove. However, a simple Google search revealed Isotoner Compression Gloves for less than \$20.00. *See:*

<http://www.allegromedical.com/orthopedics-orthotics-c528/gentle-compression-gloves-full-finger-p203026.html>

Given that Petitioner did not make use of the first pair of compression gloves, because they caused her more pain, the parties might wish to consider the purchase of the Isotoner Compression Gloves or something similar, to make sure the full fingered compression gloves work as intended. If the less expensive gloves improve Petitioner's condition, a more expensive option can be considered, once they wear out.

**CONCLUSIONS OF LAW**

That MCDFC incorrectly denied Petitioner's request for full fingered compression gloves.

**THEREFORE, it is**

**ORDERED**

That MCDFC approve the purchase of full fingered compression gloves for Petitioner. MCDFC shall take all administrative steps necessary to complete this task within 10-days of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

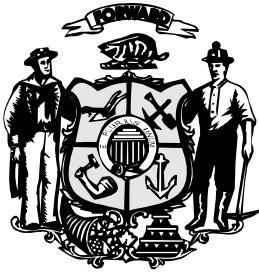
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of June, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 5, 2014.

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